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Shoreland Zoning News, Winter 2014

Maine Department of Environmental Protection

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Shoreland Zoning News

E-News from the Maine Department of Environmental Protection



Forward this E-News | Winter 2014

Commissioner's Corner

Maine's shoreland zoning standards are the cornerstone of our environmental regulations that aim to protect Maine's coastline, rivers, streams, lakes, and wetlands but it's not the only aspect the department uses to protect these valuable natural resources. Water quality monitoring also has a significant role. Last month, I had the pleasure of meeting with Scott Williams and Roberta Hill of the [Maine Volunteering Lake Monitoring Program](#), a network of over 1,000 volunteers located across the state that have been trained and provided equipment to collect important data from Maine lakes.

Their scientific data on water quality indicators is critical assistance for DEP. We cannot do our work without VLMP and rely on their quality science, passion and training to ensure thousands of volunteers (some of whom count their service in decades!) are engaged and eager to assist each year. With a very small budget, the work of VLMP is an outstanding service to Maine by being at the forefront of keeping our lakes healthy and safe.

The department also relies on volunteers to monitor and report on the health of Maine's beaches through the [Healthy Beaches Program](#). Their work ensures that we can keep Maine's coastline beaches safe and open for swimming year after year! I'm pleased to announce that the Healthy Beaches Program moved to the Shoreland Zoning unit who will oversee these monitoring efforts. If you have questions on this program, contact [Colin Clark](#).

Water quality monitoring and shoreland zoning standards go hand-in-hand to protect Maine's water and this holistic approach ensures that Maine's lakes, rivers and coastline are some of the cleanest in the country. DEP is proud to support VLMP and the Healthy Beaches programs, and we look forward to continuing these successful partnerships.

Chapter 1000 rulemaking rescheduled

As we have discussed in other editions of the newsletter, the DEP convened and facilitated a stakeholder group in 2011 to receive feedback on ways to improve the Chapter 1000 Guidelines.

With the input we received from this process, as well as recent changes to the Mandatory Shoreland Zoning Act, staff has been diligently drafting a new version of the Guidelines. Included in this draft are DEP policies concerning shoreland zoning, such as what density of development would exempt an area from being designated as Resource Protection and what is required for a revegetation plan.

The new rule will look vastly different than the current Guidelines, as it is written not as a model ordinance but similar to other DEP rules; however, the shoreland

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Assistance available

Want help with an enforcement case or consent agreement?

When unique circumstances give rise to an enforcement case not easily corrected, or when a consent agreement is needed to fully resolve a violation, contact your regional [Shoreland Zoning Staff](#).

We can provide some direction on how to investigate and resolve shoreland zoning violations.

Trainings

Erosion Control Practices for Contractors

zoning unit will be putting together a model ordinance as a guidance document to provide ordinance language options for municipalities, so amending local ordinances will be simpler.

This new version of the Guidelines will be posted in 2014 for review and comment and a public hearing will also be held. Check out our website for information on all [DEP rulemaking](#) activities.

Creative solution in a recent consent agreement

After extensive cutting and poisoning of 39 trees within the coastal wetland buffer, the Town of Wiscasset successfully saw an area revegetated and a unique consent agreement signed.



Restoration of vegetation buffer.

The comprehensive restoration plan included the replanting of 70 native trees, 35 in the five to six-foot tall range. The consent agreement negotiated and signed requires a \$13,000 fine and 80% survival rate of the plantings until May 15, 2018.

Uniquely, the consent agreement requires additional compensation to be paid to the Town if the property is sold for more than \$250,000 based on when it is sold:

- \$25,000 if sold before March 1, 2014;
- \$20,000 if sold between March 1, 2014, and March 1, 2016; and
- Decreasing amounts to \$5,000 if it is sold between March 1, 2020, and March 1, 2022.

The Town took this unique approach of ensuring that a property owner would not be compensated for committing a violation of the cutting standards to increase the view and therefore increasing the sale price. This is another excellent example for municipalities to follow when faced with a difficult enforcement case. Kudos to the Town of Wiscasset for ensuring that buffers along the resources will be protected even if a violation has occurred.

Story Series: Permitting relocation projects

Most ordinances require that the planning board or its designee review relocation of nonconforming structures, to determine where the shoreline setback could be met to the greatest practical extent. This often feels like a very subjective task.

Luckily, the ordinance includes specific criteria for reviewing applications for reconstructing, replacing or relocating nonconforming structures. Criteria include land and lot characteristics, the amount and type of vegetation that must be removed and the foundation present. Other circumstances, such as cost, are not included for review.

Vegetation to be removed is important to consider, because vegetation removal results in chronic erosion under certain circumstances. In some cases, complying with the replanting requirements will still not sufficiently replace vegetation that was removed. In these situations, relocation may not be possible.

Another reason not to relocate is when a foundation is present in good condition, and is proposed for re-use. Rather than requiring that a functioning foundation be dug up and a new foundation installed elsewhere, exposing soil over much of the lot, a good foundation can be used for a reconstruction project.

A limiting factor to relocation is the location of the septic system. A structure should not be sited on top of the existing septic system. Additionally, suitable soils for septic systems are avoided to accommodate future replacement systems, because septic systems don't last forever.

Land and lot characteristics aren't usually difficult to review. If a lot is not deep enough, a structure could not be relocated to meet the setback. If the land slopes steeply further from the shoreline, relocation onto the slope could create chronic erosion, especially when vegetation from the slope must be removed.

Good for CEO credits!
February 4 in Ellsworth
Registration form [online](#).

Subsurface Wastewater Disposal Systems

New training statewide.
Starting in February
More information [online](#).

Local Soil and Water Conservation Districts

Remember to check out your local districts.
Variety of trainings may qualify for credits.
List of districts [online](#).

Announcements

Water Quality Workshops for CEOs and Planners will be hosted by the Maine Coastal Program.

Presentations will be given by DHHS, DEP and FS. There will be time for region-specific questions. Learn how to keep beaches healthy and keep shellfish harvesters happy.

January 15 in Freeport
January 16 in Machias
January 30 in Thomaston
February 5 in Ellsworth
February 12 in Saco

Register with [DACE](#).

The recent Maine EnviroNews featured lakes.

"Maine's 6,000 lakes are a \$3.5 billion economic engine that sustain 52,000 jobs, generate substantial tax revenues for towns from shoreland properties and provide drinking water for half of all Mainers."

Find, and subscribe to, other DEP newsletters [online](#).

The planning board, or the code enforcement officer who may be designated by the planning board, may request an advisory opinion from [Shoreland Zoning Program staff](#). We can discuss the specific project details as they relate to the ordinance and review criteria. If warranted we can meet municipal officials on-site.

Your Questions: Shoreline of a coastal wetland

Q: For almost all the standards, the Highest Annual, or Astronomical, Tide (HAT) must be identified, but where is that line?



Coastal wetland with sand dune.

A: Finding the shoreline of a coastal wetland is not as easy as it can be for freshwater resources. Tidal areas have a different set of variables to consider: twice daily tidal fluctuations, wave action, storm surge, etc.

Shoreland zoning regulation relies on the identification of the HAT for most all the standards, so it is imperative to know where that line is. DEP's best recommendation is that municipalities require a property owner to provide a surveyed elevation that identifies the line on a parcel slated for development.

To help with this, the DEP annually produces a [table that provides the HAT](#) elevation from Kittery to Eastport. A surveyor locates an elevation that is not only accurate, but it is also reproducible in the future. This is the most widely used method for coastal communities.

An elevation survey eliminates the problems encountered with trying to delineate vegetation that doesn't exist along a rocky shoreline or sand beach, an impossible task. Consider this when the next coastal project floats across your desk!



Stream crossing.

Shoreland Zoning Notes

Roads and Streams

For municipal officials trying to plan around roads and streams, a new resource depicts stream crossings and lists funding sources. The [Maine Stream Habitat Viewer](#) "displays habitats for species important to Maine's economy, ecology, and way of life."

Updated Websites

As mentioned in previous editions, the [Code Enforcement Training and Certification](#) resources have moved to the Department of Economic and Community Development. Additionally, all websites for the Department of Agriculture, Conservation and Forestry have been updated, including the Statewide Standards for [Timber Harvesting](#), the [Municipal Planning Assistance Program](#) and the [Floodplain Management Program](#).

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